

# Senate Amendment 3073

PAG LIN

1 1 Amend Senate File 128 as follows:  
1 2 #1. Page 1, by inserting before line 1, the  
1 3 following:  
1 4 <DIVISION I  
1 5 CIGARETTE AND TOBACCO PRODUCTS  
1 6 TAX PROVISIONS>  
1 7 #2. Page 4, line 10, by inserting after the word  
1 8 <This> the following: <division of this>.  
1 9 #3. Page 4, by inserting after line 11 the  
1 10 following:  
1 11 <DIVISION II  
1 12 CIGARETTE AND TOBACCO PRODUCTS  
1 13 REGULATORY PROVISIONS  
1 14 Sec. \_\_\_\_\_. Section 453A.2, subsections 1, 2, and 3,  
1 15 Code 2007, are amended to read as follows:  
1 16 1. A person shall not sell, give, or otherwise  
1 17 supply any tobacco, tobacco products, or cigarettes to  
1 18 any person under ~~eighteen~~ twenty-one years of age.  
1 19 2. A person under ~~eighteen~~ twenty-one years of age  
1 20 shall not smoke, use, possess, purchase, or attempt to  
1 21 purchase any tobacco, tobacco products, or cigarettes.  
1 22 3. Possession of cigarettes or tobacco products by  
1 23 an individual under ~~eighteen~~ twenty-one years of age  
1 24 does not constitute a violation under this section if  
1 25 the individual under ~~eighteen~~ twenty-one years of age  
1 26 possesses the cigarettes or tobacco products as part  
1 27 of the individual's employment and the individual is  
1 28 employed by a person who holds a valid permit under  
1 29 this chapter or who lawfully offers for sale or sells  
1 30 cigarettes or tobacco products.  
1 31 Sec. \_\_\_\_\_. Section 453A.2, subsection 8, paragraph  
1 32 b, Code 2007, is amended to read as follows:  
1 33 b. The compliance effort is conducted with the  
1 34 advance knowledge of law enforcement officers and  
1 35 reasonable measures are adopted by those conducting  
1 36 the effort to ensure that use of cigarettes or tobacco  
1 37 products by individuals under ~~eighteen~~ twenty-one  
1 38 years of age does not result from participation by any  
1 39 individual under ~~eighteen~~ twenty-one years of age in  
1 40 the compliance effort.  
1 41 Sec. \_\_\_\_\_. Section 453A.4, subsections 1 and 3,  
1 42 Code 2007, are amended to read as follows:  
1 43 1. If a person holding a permit under this chapter  
1 44 or an employee of such a permittee has a reasonable  
1 45 belief based on factual evidence that a driver's  
1 46 license as defined in section 321.1, subsection 20A,  
1 47 ~~or a nonoperator's identification card issued pursuant~~  
1 48 ~~to section 321.190, or a cigarette and tobacco product~~  
1 49 ~~purchaser identification card issued pursuant to~~  
1 50 ~~section 453.5A~~ offered by a person who wishes to  
2 1 purchase cigarettes or tobacco products is altered or  
2 2 falsified or belongs to another person, the permittee  
2 3 or employee may retain the driver's license ~~or,~~  
2 4 nonoperator's identification card, ~~or cigarette and~~  
2 5 ~~tobacco product purchaser identification card.~~ Within  
2 6 twenty-four hours, the card shall be delivered to the  
2 7 appropriate city or county law enforcement agency of  
2 8 the jurisdiction in which the permittee's premises are  
2 9 located, and the permittee shall file a written report  
2 10 of the circumstances under which the card was  
2 11 retained. The local law enforcement agency may  
2 12 investigate whether a violation of section 321.216,  
2 13 321.216A, ~~or~~ 321.216C, ~~or 453A.5A~~ has occurred. If an  
2 14 investigation is not initiated or probable cause is  
2 15 not established by the local law enforcement agency,  
2 16 the driver's license ~~or,~~ nonoperator's identification  
2 17 card, ~~or cigarette and tobacco product purchaser~~  
2 18 ~~identification card~~ shall be delivered to the person  
2 19 to whom it was issued. The local law enforcement  
2 20 agency may forward the card with the report to the  
2 21 state department of transportation ~~or department of~~  
2 22 ~~public health~~ for investigation, in which case, the  
2 23 state department of transportation ~~or department of~~  
2 24 ~~public health~~ may investigate whether a violation of

2 25 section 321.216, 321.216A, or 321.216C, or 453A.5A has  
2 26 occurred. The state department of transportation  
2 27 shall return the card to the person to whom it was  
2 28 issued if an investigation is not initiated or  
2 29 probable cause is not established.

2 30 3. A person holding a permit under this chapter or  
2 31 an employee of such a permittee is not subject to  
2 32 criminal prosecution for, or to civil liability for  
2 33 damages alleged to have resulted from, the retention  
2 34 and delivery of a driver's license ~~or a~~ nonoperator's  
2 35 identification card, or cigarette and tobacco product  
2 36 purchaser identification card which is taken pursuant  
2 37 to subsections 1 and 2. This section shall not be  
2 38 construed to relieve a permittee or an employee of  
2 39 such a permittee from civil liability for damages  
2 40 resulting from the use of unreasonable force in  
2 41 obtaining the alleged altered or falsified driver's  
2 42 license ~~or~~ identification card, or cigarette and  
2 43 tobacco product purchaser identification card or the  
2 44 driver's license, ~~or~~ identification card, or cigarette  
2 45 and tobacco product purchaser identification card  
2 46 believed to belong to another person.

2 47 Sec. \_\_\_\_\_. Section 453A.5, subsection 1, Code 2007,  
2 48 is amended to read as follows:

2 49 1. The alcoholic beverages division of the  
2 50 department of commerce shall develop a tobacco  
3 1 compliance employee training program not to exceed two  
3 2 hours in length for employees and prospective  
3 3 employees of retailers, as defined in sections 453A.1  
3 4 and 453A.42, to inform the employees about state and  
3 5 federal laws and regulations regarding the sale of  
3 6 cigarettes and tobacco products to persons under  
3 7 ~~eighteen~~ twenty-one years of age and compliance with  
3 8 and the importance of laws regarding the sale of  
3 9 cigarettes and tobacco products to persons under  
3 10 ~~eighteen~~ twenty-one years of age.

3 11 Sec. \_\_\_\_\_. NEW SECTION. 453A.5A APPLICATION FOR  
3 12 AND ISSUANCE OF CIGARETTE AND TOBACCO PRODUCT  
3 13 PURCHASER IDENTIFICATION CARD == DUPLICATE == RENEWAL.

3 14 1. A resident of this state shall not purchase  
3 15 cigarettes or tobacco products in this state without  
3 16 first applying for and obtaining a cigarette and  
3 17 tobacco product purchaser identification card in  
3 18 accordance with this section.

3 19 2. Every applicant for a cigarette and tobacco  
3 20 product purchaser identification card shall do all of  
3 21 the following:

3 22 a. Make application on a form provided by the  
3 23 department of public health which shall include the  
3 24 applicant's full name, signature, current mailing  
3 25 address, current residential address, date of birth,  
3 26 social security number, and physical description  
3 27 including sex, height, and eye color. The application  
3 28 shall include a statement for the applicant to sign  
3 29 that acknowledges the applicant's knowledge of the  
3 30 requirement to notify the department of a mailing  
3 31 address change. The application may contain other  
3 32 information the department may require by rule.  
3 33 Pursuant to procedures established by the department  
3 34 and for an applicant who is a foreign national  
3 35 temporarily present in this state, the department may  
3 36 waive the requirement that the application include the  
3 37 applicant's social security number.

3 38 b. Surrender all other cigarette and tobacco  
3 39 product purchaser identification cards.

3 40 c. Certify that the applicant has no other  
3 41 cigarette and tobacco product identification cards.

3 42 d. Certify that the applicant is not currently  
3 43 subject to suspension, revocation, or cancellation of  
3 44 any cigarette and tobacco product identification cards  
3 45 and has committed no offense and has not acted in a  
3 46 manner which either alone or with previous actions or  
3 47 offenses could result in suspension, revocation, or  
3 48 cancellation of any such card.

3 49 e. Certify that the applicant is not currently a  
3 50 recipient of state public assistance or benefits.

4 1 3. a. The department of public health shall, upon  
4 2 application and payment of the required fee, issue to  
4 3 an applicant a cigarette and tobacco product purchaser  
4 4 identification card. To be valid the card shall bear  
4 5 a distinguishing number other than a social security

4 6 number assigned to the cardholder, the full name, date  
4 7 of birth, sex, current residential address, a physical  
4 8 description and a colored photograph of the  
4 9 cardholder, the usual signature of the cardholder, and  
4 10 such other information as the department may require  
4 11 by rule. The card shall be issued to the applicant at  
4 12 the time of application pursuant to procedures  
4 13 established by rule.

4 14 b. The department shall use a process or processes  
4 15 for issuance of a cigarette and tobacco product  
4 16 purchaser identification card, that prevent, as nearly  
4 17 as possible, the opportunity for alteration or  
4 18 reproduction of, and the superimposition of a  
4 19 photograph on the card without ready detection.

4 20 c. The fee for a cigarette and tobacco product  
4 21 purchaser identification card shall be ten dollars and  
4 22 the card shall be valid for a period of one year from  
4 23 the date of issuance. A cigarette and tobacco product  
4 24 purchaser identification card shall be issued without  
4 25 expiration to anyone age seventy or older. If an  
4 26 applicant for a card is a foreign national who is  
4 27 temporarily present in this state, the card shall be  
4 28 issued only for the length of time the foreign  
4 29 national is authorized to be present as determined by  
4 30 the department, not to exceed two years. The  
4 31 cigarette and tobacco product purchaser identification  
4 32 card fees shall be transmitted by the department to  
4 33 the treasurer of state who shall credit the fees to  
4 34 the general fund of the state.

4 35 4. A cardholder shall notify the department when  
4 36 the cardholder's mailing address changes and provide  
4 37 the new address within thirty days of obtaining the  
4 38 new address.

4 39 5. The department of public health shall not issue  
4 40 a cigarette and tobacco product purchaser  
4 41 identification card to an applicant who is receiving  
4 42 state public assistance or benefits.

4 43 6. The department shall cancel a person's  
4 44 cigarette and tobacco product purchaser identification  
4 45 card upon determining the person was not entitled to  
4 46 be issued the card, did not provide correct  
4 47 information, committed fraud in applying for the card,  
4 48 or unlawfully used a cigarette and tobacco product  
4 49 purchaser identification card. Upon cancellation, the  
4 50 cardholder shall immediately return the card to the  
5 1 department.

5 2 7. If a cigarette and tobacco product purchaser  
5 3 identification card issued under this section is lost  
5 4 or destroyed, the person to whom the card was issued  
5 5 may, upon payment of a fee of three dollars, obtain a  
5 6 duplicate, or substitute, upon furnishing proof  
5 7 satisfactory to the department that the card has been  
5 8 lost or destroyed. A fee of one dollar shall be  
5 9 charged for the voluntary replacement of a card.

5 10 8. A cigarette and tobacco product purchaser  
5 11 identification card expires one year from the  
5 12 cardholder's birthday anniversary occurring in the  
5 13 year of issuance. If a cardholder is a foreign  
5 14 national who is temporarily present in this state, the  
5 15 card shall be issued only for the length of time the  
5 16 foreign national is authorized to be present as  
5 17 determined by the department, not to exceed two years.

5 18 9. A cigarette and tobacco product purchaser  
5 19 identification card is renewable without penalty  
5 20 within a period of sixty days after its expiration. A  
5 21 person shall not be considered to be purchasing  
5 22 cigarettes or tobacco products with an invalid card  
5 23 during a period of sixty days following the card's  
5 24 expiration date. However, for a card renewed within  
5 25 the sixty-day period, the date of issuance shall be  
5 26 considered to be the previous birthday anniversary on  
5 27 which the card expired. For the purposes of this  
5 28 subsection, the birthday anniversary of a person born  
5 29 on February 29 shall be deemed to occur on March 1.

5 30 10. It is a simple misdemeanor punishable as a  
5 31 scheduled violation under section 805.8C, subsection  
5 32 3, paragraph "d", for any person:

5 33 a. To display or cause or permit to be displayed  
5 34 or have in the person's possession a canceled,  
5 35 revoked, suspended, fictitious, or fraudulently  
5 36 altered cigarette and tobacco product purchaser

5 37 identification card.  
5 38     b. To lend that person's cigarette and tobacco  
5 39 product purchaser identification card to another  
5 40 person or knowingly permit the use of the cigarette  
5 41 and tobacco product purchaser identification card by  
5 42 another.  
5 43     c. To display or represent as one's own a  
5 44 cigarette and tobacco product purchaser identification  
5 45 card not issued to that person.  
5 46     d. To fail or refuse to surrender to the  
5 47 department upon its lawful demand a cigarette and  
5 48 tobacco product purchaser identification card which  
5 49 has been suspended, revoked, or canceled.  
5 50     e. To permit an unlawful use of a cigarette and  
6 1 tobacco product purchaser identification card issued  
6 2 to that person.  
6 3     11. It is a serious misdemeanor for a person to do  
6 4 any of the following:  
6 5     a. Make a cigarette and tobacco product purchaser  
6 6 identification card if the person has no authority or  
6 7 right to make the cigarette and tobacco product  
6 8 purchaser identification card.  
6 9     b. Obtain, possess, or have in the person's  
6 10 control or on the person's premises, cigarette and  
6 11 tobacco product purchaser identification card forms.  
6 12     c. Obtain, possess, or have in the person's  
6 13 control or on the person's premises, a cigarette and  
6 14 tobacco product purchaser identification card which  
6 15 has been made by a person having no authority or right  
6 16 to make the cigarette and tobacco product purchaser  
6 17 identification card.  
6 18     d. Use a false or fictitious name in any  
6 19 application for a cigarette and tobacco product  
6 20 purchaser identification card or to knowingly make a  
6 21 false statement or knowingly conceal a material fact  
6 22 or otherwise commit fraud on an application.  
6 23     12. A person who is under the age of twenty-one,  
6 24 who alters or displays or has in the person's  
6 25 possession a fictitious or fraudulently altered  
6 26 cigarette and tobacco product purchaser identification  
6 27 card and who uses the cigarette and tobacco product  
6 28 purchaser identification card to violate or attempt to  
6 29 violate section 453A.2, subsection 2, commits a simple  
6 30 misdemeanor punishable as a scheduled violation under  
6 31 section 805.8C, subsection 3, paragraph "e". The  
6 32 court shall forward a copy of the conviction to the  
6 33 department.  
6 34     13. The department of public health shall adopt  
6 35 rules to administer this section and shall collaborate  
6 36 with the department of transportation to replicate, to  
6 37 the maximum extent possible, the provisions relating  
6 38 to driver's licenses and nonoperator's identification  
6 39 cards pursuant to chapter 321 in developing and  
6 40 administering the cigarette and tobacco product  
6 41 purchaser identification card provisions of this  
6 42 section.  
6 43     Sec. \_\_\_\_\_. Section 453A.36, subsection 6, Code  
6 44 2007, is amended to read as follows:  
6 45     6. Any sales of cigarettes or tobacco products  
6 46 made through a cigarette vending machine are subject  
6 47 to rules and penalties relative to retail sales of  
6 48 cigarettes and tobacco products provided for in this  
6 49 chapter. No cigarettes shall be sold through any  
6 50 cigarette vending machine unless the cigarettes have  
7 1 been properly stamped or metered as provided by this  
7 2 division, and in case of violation of this provision,  
7 3 the permit of the dealer authorizing retail sales of  
7 4 cigarettes shall be canceled. Payment of the license  
7 5 fee as provided in section 453A.13 authorizes a  
7 6 cigarette vendor to sell cigarettes or tobacco  
7 7 products through vending machines. However,  
7 8 cigarettes or tobacco products shall not be sold  
7 9 through a vending machine unless the vending machine  
7 10 is located in a place where the retailer ensures that  
7 11 no person younger than ~~eighteen~~ twenty-one years of  
7 12 age is present or permitted to enter at any time.  
7 13 This section does not require a retail licensee to buy  
7 14 a cigarette vendor's permit if the retail licensee is  
7 15 in fact the owner of the cigarette vending machines  
7 16 and the machines are operated in the location  
7 17 described in the retail permit.

7 18 Sec. \_\_\_\_\_. Section 453A.39, subsection 2,  
7 19 paragraphs b and c, Code 2007, are amended to read as  
7 20 follows:  
7 21 b. A manufacturer, distributor, wholesaler,  
7 22 retailer, or distributing agent or agent thereof shall  
7 23 not give away any cigarettes or tobacco products to  
7 24 any person under ~~eighteen~~ twenty-one years of age, or  
7 25 within five hundred feet of any playground, school,  
7 26 high school, or other facility when such facility is  
7 27 being used primarily by persons under age ~~eighteen~~  
7 28 twenty-one for recreational, educational, or other  
7 29 purposes.  
7 30 c. Proof of age shall be required if a reasonable  
7 31 person could conclude on the basis of outward  
7 32 appearance that a prospective recipient of a sample  
7 33 may be under ~~eighteen~~ twenty-one years of age.  
7 34 Sec. \_\_\_\_\_. Section 805.8C, subsection 3, Code 2007,  
7 35 is amended by adding the following new paragraphs:  
7 36 NEW PARAGRAPH. d. For violations of section  
7 37 453A.5A, subsection 9, the scheduled fine is  
7 38 seventy-five dollars, and is a civil penalty, and the  
7 39 criminal penalty surcharge under section 911.1 shall  
7 40 not be added to the penalty, and the court costs  
7 41 pursuant to section 805.9, subsection 6, shall not be  
7 42 imposed. If the civil penalty assessed for a  
7 43 violation of section 453A.5A, subsection 9, is not  
7 44 paid in a timely manner, a citation shall be issued  
7 45 for the violation in the manner provided in section  
7 46 804.1. However, a person under the age of eighteen  
7 47 shall not be detained in a secure facility for failure  
7 48 to pay the civil penalty. The complainant shall not  
7 49 be charged a filing fee.  
7 50 NEW PARAGRAPH. e. For violations of section  
8 1 453A.5A, subsection 11, the scheduled fine is one  
8 2 hundred dollars, and is a civil penalty, and the  
8 3 criminal penalty surcharge under section 911.1 shall  
8 4 not be added to the penalty, and the court costs  
8 5 pursuant to section 805.9, subsection 6, shall not be  
8 6 imposed. If the civil penalty assessed for a  
8 7 violation of section 453A.5A, subsection 11, is not  
8 8 paid in a timely manner, a citation shall be issued  
8 9 for the violation in the manner provided in section  
8 10 804.1. However, a person under the age of eighteen  
8 11 shall not be detained in a secure facility for failure  
8 12 to pay the civil penalty. The complainant shall not  
8 13 be charged a filing fee.>  
8 14 #4. Title page, line 1, by inserting after the  
8 15 word <to> the following: <cigarettes and tobacco  
8 16 products including regulatory provisions,>.  
8 17 #5. Title page, line 3, by inserting after the  
8 18 word <fund,> the following: <providing penalties,>.  
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8 20  
8 21  
8 22 DAVID L. HARTSUCH  
8 23 SF 128.705 82  
8 24 pf/gg/6577